

F. Reconciliation

§ 19. Introduction.

Section 301(b)(2) of the Congressional Budget Act⁽¹⁾ provides for the optional inclusion of reconciliation directives in a budget resolution. Section 310 contains procedures for the reporting and consideration of reconciliation legislation.⁽²⁾

Reconciliation directives direct committees of the House and the Senate to recommend changes in existing law to achieve the spending and revenue levels contemplated by the concurrent resolution on the budget. In this way, existing law is “reconciled” with the non-binding budget priorities of the budget resolution containing the reconciliation directives.

The committees then submit these recommendations to the budget committees of their respective Houses. Section 310 of the Congressional Budget Act directs the budget committees to compile these recommendations, “without any substantive revision,” into one bill for action in their respective Houses.⁽³⁾ However, if only one committee of the House is directed to recommend changes to existing law, that committee reports legislation containing such recommendations directly to the House.⁽⁴⁾

Reconciliation directives have varied over time in the level of detail provided to the applicable committees. In some cases, such directives have specified the laws to be amended by reconciliation legislation,⁽⁵⁾ though in most cases merely the total amount of deficit reduction required to be achieved has been specified. Reconciliation directives may call for multiple measures (rather than a single omnibus) to achieve the desired budgetary goals.⁽⁶⁾ Reconciliation directives have been framed in terms of spending ceilings; as opposed to the more traditional method of indicating a specified total amount of budgetary savings to be achieved.⁽⁷⁾

Although there are no expedited procedures in the House for the consideration of reconciliation legislation (beyond the privilege afforded such measures by Rule XIII clause 5), the Senate proceeds with reconciliation legislation under the same expedited procedures as it does for consideration of

1. 2 USC § 632(b)(2). See also § 4, *supra*.

2. 2 USC § 641.

3. 2 USC § 641(b)(2).

4. 2 USC § 641(b)(1).

5. See § 20.3, *infra*.

6. See § 20.1, *infra*. For a Senate ruling that the Congressional Budget Act places no restriction on the number of reconciliation bills contemplated by reconciliation directives contained in a budget resolution, see 142 CONG. REC. 11941, 104th Cong. 2d Sess., May 21, 1996.

7. See § 20.2, *infra*.

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budget resolutions.⁽⁸⁾ Pursuant to Rule XIII clause 5(a)(2), reconciliation measures are filed from the floor as privileged.⁽⁹⁾

Section 310(d) provides that amendments to reconciliation bills must be budget neutral. Similarly, Rule XXI clause 7⁽¹⁰⁾ provides that it is not in order in the House to consider a concurrent resolution on the budget containing reconciliation directives that would result in reconciliation legislation causing an increase in net direct spending.⁽¹¹⁾ Section 310(d)(5) of the Congressional Budget Act also gives the House Committee on Rules the ability to make in order amendments that achieve reconciliation goals if committees of the House fail to submit the required recommendations to the Committee on the Budget.⁽¹²⁾

Section 310 of the Congressional Budget Act has also been modified by subsequent budget enforcement statutes. Prior to the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings),⁽¹³⁾ the Congressional Budget Act permitted the second concurrent resolution on the budget, to initiate the reconciliation process as outlined in section 310. Gramm-Rudman-Hollings eliminated the requirement for a second concurrent resolution and added additional specific guidelines for the reconciliation process.⁽¹⁴⁾ The Budget Enforcement Act of 1990⁽¹⁵⁾ deleted the previous June 15 deadline for the completion of reconciliation legislation. The Budget Enforcement Act of 1997⁽¹⁶⁾ clarified that committees, in meeting their reconciliation targets, may alternatively substitute revenue and spending changes by up to 20 percent of the sum of the absolute value of the reconciled changes as long as the result does not increase the deficit relative to that contemplated by the reconciliation directives.⁽¹⁷⁾

8. For a discussion on the Senate procedures for the consideration of budget resolutions, see § 5, *supra*.

9. See *House Rules and Manual* § 853 (2011), and § 21.1, *infra*.

10. See *House Rules and Manual* § 1068b (2011), and § 5, *supra*.

11. Under a prior version of the rule, in effect during the 110th and 111th Congresses, reconciliation directives in a concurrent resolution on the budget could not require legislation that would either reduce a surplus or increase the deficit. *House Rules and Manual* § 1068b (2011).

12. See § 21.5, *infra*.

13. Pub. L. No. 99-177.

14. Gramm-Rudman-Hollings amended subsection (a) and added paragraph (1)(D) to subsection (a) along with new subsections (b) through (g). Before Gramm-Rudman-Hollings a point of order prevented the House from adjourning *sine die* before completion of the reconciliation process. See § 21.16, *infra*. After Gramm-Rudman-Hollings, a point of order now exists under section 310(f) against adjourning for more than three days in July before completing action on reconciliation legislation. 2 USC § 641(f).

15. Pub. L. No. 101-508.

16. Pub. L. No. 105-33.

17. 2 USC § 641(c)(1)(A). For a Senate ruling indicating that the reconciliation process may be used for revenue reduction, see 142 CONG. REC. 11940, 104th Cong. 2d Sess., May 21, 1996.

Congress has often completed consideration of reconciliation legislation through the use of conference committees to resolve differences between the House and the Senate. As noted above, reconciliation measures are typically quite complex, having been composed of diverse submissions from both House and Senate committees and compiled into a single omnibus measure. This complexity has resulted in lengthy and intricate conference appointments in order to ensure appropriate representation of House committees on the various portions of the measure.⁽¹⁸⁾ This complexity has also been reflected in elaborate special orders of business that provide debate time for the numerous committees whose jurisdiction is represented in the underlying legislation.⁽¹⁹⁾

Conference reports on reconciliation legislation have been recommitted to conference.⁽²⁰⁾ The filing of a conference report on reconciliation legislation containing errors has been vacated by a special order providing for the re-filing of a corrected report.⁽²¹⁾ A special order of business has provided for the rejection of a conference report and the taking instead of alternate procedural steps to dispose of Senate amendments.⁽²²⁾

Consideration in the Senate; the “Byrd Rule”

Section 313 of the Congressional Budget Act⁽¹⁾ provides a point of order in the Senate against consideration of “extraneous” provisions in a reconciliation bill. This provision of the Congressional Budget Act is popularly known as the “Byrd Rule,” after the former Senator from West Virginia, Robert Byrd. Even though this point of order applies only to the Senate, it can be raised against provisions that originated in the House.

The definition of what constitutes an “extraneous” provision is found in section 313(b) of the Congressional Budget Act.⁽²⁾ While the definition is extensive and contains numerous exceptions, the crux of the analysis is determining whether or not the provision in question has a budgetary impact.

18. For an example of such a complex appointment of conferees, see Deschler-Brown Precedents Ch. 33 § 6.40, *supra*. Traditionally, “general” conferees (appointed for consideration of the entire measure) are appointed from the Committee on the Budget, while “limited” conferees are appointed from other committees of the House for the portions of the measure falling within their respective jurisdictions. For a statement by the chairman of the Committee on the Budget as to certain “rules” or “understandings” to govern conference proceedings on a complex reconciliation measure, see Deschler-Brown Precedents Ch. 33 § 5.16, *supra*. For a description of complicated signature sheets filed with a conference report on reconciliation legislation (reflecting the numerous “subconferences” held to address particular portions), see Deschler-Brown Precedents Ch. 33 § 18.14, *supra*.

19. See, e.g., Deschler-Brown Precedents Ch. 33 § 21.8, *supra*.

20. Deschler-Brown Precedents Ch. 33 § 32.2, *supra*.

21. See § 21.13, *infra*.

22. Deschler-Brown Precedents Ch. 33 § 30.27, *supra*.

1. 2 USC § 644. This section was added by the Budget Enforcement Act of 1990 (Pub. L. No. 101-508, title XIII).

2. 2 USC § 644(b).

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Provisions that do not have any budgetary impact (*i.e.*, do not produce any change in outlays or revenues) or whose budgetary impact is merely “incidental” to non-budgetary provisions will typically be considered extraneous.⁽³⁾

Under section 904(d) of the Congressional Budget Act,⁽⁴⁾ an affirmative vote of three-fifths of the Senators duly chosen and sworn is required to sustain an appeal of the ruling of the Presiding Officer on a point of order under section 313 of the Congressional Budget Act.⁽⁵⁾

§ 20. Reconciliation Directives in Budget Resolutions

§ 20.1 Form of a conference report and joint explanatory statement to accompany a concurrent resolution on the budget containing reconciliation directives that were not only programmatic but also compartmentalized into three separate measures⁽¹⁾ to be recommended by the requisite committees by separate dates certain.

On June 7, 1996,⁽²⁾ the following occurred:

Mr. [Wally] HERGER [of California] submitted the following conference report and statement on the concurrent resolution (H. Con. Res. 178) establishing the congressional budget for the United States Government for fiscal year 1997 and setting forth appropriate budgetary levels for fiscal years 1998, 1999, 2000, 2001, and 2002:

CONFERENCE REPORT (H. CON. RES. 178)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 178) establishing the congressional budget for the United States Government for fiscal year 1997 and setting forth appropriate budgetary levels for fiscal years 1998, 1999, 2000, 2001, and 2002, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1997.

The Congress determines and declares that the concurrent resolution on the budget for fiscal year 1997 is hereby established and that the appropriate budgetary levels for fiscal years 1998 through 2002 are hereby set forth.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this concurrent resolution is as follows: . . .

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3. See, *e.g.*, 141 CONG. REC. 30379, 104th Cong. 1st Sess., Oct. 27, 1995.
 4. 2 USC § 621 note.
 5. See 139 CONG. REC. 19763–67, 103d Cong. 1st Sess., Aug. 6, 1993. See also Deschler-Brown Precedents Ch. 33 §§ 19.24, 19.25, 25.26, *supra*.
 1. This was the first instance of reconciliation directives contemplating multiple measures to achieve distinct budgetary goals.
 2. 142 CONG. REC. 13433, 13437, 13438, 13458, 13459, 104th Cong. 2d Sess.